

## EXHIBIT 3

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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF MASSACHUSETTS

6 CYCLE-CRAFT CO., INC. ) CIVIL ACTION

7 D/B/A BOSTON HARLEY-DAVIDSON/BUELL, ) NO. 11402NMG

8 PLAINTIFF, )

9 v. )

10 HARLEY-DAVIDSON MOTOR COMPANY, INC., )

11 AND BUELL DISTRIBUTION COMPANY, LLC, )

12 DEFENDANTS. )

13 \_\_\_\_\_ )

14 DEPOSITION OF JASON MARASCA

15 DATE: APRIL 28, 2005

16 TIME: 10:06 A.M.

17 PLACE: BINGHAM MCCUTCHEN

18 150 FEDERAL STREET

19 BOSTON, MA 02110

20 **MEDEIROS STENO & VIDEO GROUP**

22 "FOR THE TRAVELING LITIGATOR SINCE 1988"

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\*Video

\*MA \*CT \*NJ \*NY \*FL

1 A: I don't really remember, no.

2 Q: **Did anyone contact you on behalf of**  
3 **Cycle-Craft at anytime?**

4 A: Cycle-Craft, I believe she called me.

5 MR. BERKOWITZ: For the record, the  
6 witness is pointing at Ms. Smagula.

7 THE WITNESS: Sorry I couldn't pronounce  
8 your last name.

9 MS. SMAGULA: That's okay.

10 Q: **At some point did Ms. Smagula contact you?**

11 A: Yeah, I believe she left me a message at my  
12 home phone.

13 Q: **Did you return the call?**

14 A: No, I didn't.

15 Q: **Do you recall what the message indicated?**

16 A: I believe she was saying that she could,  
17 Boston Harley-Davidson would like to represent me in  
18 this case.

19 Q: **And by "represent" you was it your**  
20 **understanding that Boston Harley-Davidson's counsel**  
21 **was offering to represent you individually in**  
22 **connection with this deposition?**

23 A: Yeah.

24 Q: **Did you have any further conversations with**

1       **Cycle-Craft or its counsel?**

2           A: No, I did not.

3           Q: Did you have any other conversations with  
4       **Cycle-Craft personnel on the topic of this**  
5       **litigation, separate and apart from the deposition?**

6           A: No.

7           Q: What about conversations with persons from  
8       my office, attorneys for Harley-Davidson, did you  
9       have any conversations with those attorneys?

10          A: Yes.

11          Q: With whom?

12          A: With Mr. Benson and Sabita.

13          Q: Sabita. Do you recall approximately when  
14       **the first of these conversations was?**

15          A: Actually, I believe Sean called and had a,  
16       Sean got the subpoena first, called me and said that  
17       he sees my name on it and I'm going to be going, I'm  
18       going to be getting one too, so I called Sabita that  
19       day. Then I got this a day after or two.

20          Q: Do you remember what was discussed between  
21       you and Sabita?

22          A: She, no it was pretty short. She was  
23       saying that, "You are going to be subpoenaed and  
24       you'll be coming in for a deposition."

1 Q: What about your conversation with Mr.  
2 Benson, do you recall anything that Mr. Benson said  
3 to you or you said to Mr. Benson?

4 A: I believe Mr. Benson called me to remind me  
5 about the subpoena and he asked me a couple of  
6 questions.

7 Q: Do you remember what he asked you?

8 A: A couple of questions about Lee Custom  
9 Cycles. I don't remember the specifics, though.

10 Q: Do you remember, even if you don't remember  
11 the specifics, do you remember any topics Mr. Benson  
12 asked you about?

13 A: He asked me if I sold the motorcycles to  
14 Lee Custom Cycles and I believe that was it. I  
15 really don't remember anymore conversation.

16 Q: Do you recall any other conversations that  
17 you had with representatives of either Cycle-Craft or  
18 Harley-Davidson on the subject of this litigation,  
19 apart from what you've already told us?

20 A: No, I don't believe so.

21 MR. BERKOWITZ: Off the record.

22 THE VIDEOGRAPHER: The time is 11:18 a.m.  
23 We're now off the record.

24 (Off the Record)

1 Manager at Kelly's Harley-Davidson?

2 A: That's correct.

3 Q: What's the name of the General Manager?

4 A: Wayne Hathaway.

5 Q: Does Wayne Hathaway, as far as you  
6 understand it, report directly to Brian Kelly?

7 A: Yes.

8 Q: Have you had any conversations with either  
9 Wayne Hathaway or Brian Kelly about any of your  
10 experiences at Boston Harley-Davidson?

11 A: Yes.

12 Q: What have you told them about your  
13 experiences at Boston Harley-Davidson?

14 A: That towards the end of my job there I just  
15 didn't like working there anymore.

16 Q: Was that because of Ron Buchbaum?

17 A: Yes.

18 Q: Did you tell that to Wayne Hathaway and/or  
19 Brian Kelly?

20 A: To Wayne Hathaway I did, yes.

21 Q: Have you had any conversations with anyone  
22 at Kelly Harley-Davidson, and when I say, I'm not  
23 saying the whole name Kelly's World of  
24 Harley-Davidson, but if I say Kelly's Harley-Davidson

1 A: I'm not positive. No.

2 Q: Have you talked to Sean Walsh in the last  
3 48 hours?

4 A: Yes.

5 Q: When did you talk to him?

6 A: Last night.

7 Q: Did he call you or did you call him?

8 A: I called him. He called me back.

9 Q: Had you guys previously planned to touch  
10 base last night so that he could tell you how his  
11 deposition went?

12 A: I think so.

13 Q: What did he tell you?

14 A: He said he got out at 2:30. It was long.

15 We went over a few things and that's pretty much it.

16 Q: What else did else did he tell you? Tell  
17 me as best you can every single thing that he told  
18 you about the deposition?

19 A: You want ever single thing that he told me?

20 MR. REHNQUIST: I want every single thing  
21 that he told you.

22 THE WITNESS: Okay. He told me how it  
23 went, that Bill went over a bunch of questions with  
24 him. He answered a bunch of questions about --

1           **Q: I'm sorry, when you say "Bill" do you mean,**  
2           **you gestured over there, I assume you're meaning Mr.**  
3           **Berkowitz?**

4            MR. BERKOWITZ: There's two Bills here.

5            THE WITNESS: I'm sorry. Mr. Berkowitz.  
6            And that he was asked about the dealings with the  
7            Florida guy, I'm not sure of the name of the company  
8            that Sean was talking about. And he mentioned that  
9            he was asked about the Lee Custom Cycles deals and  
10           the Lou Winz deals and that my name came up a couple  
11           of times about the Lee Custom Cycles deal, but that's  
12           pretty much it. Jamie McGrath's name came up a bunch  
13           about a few things and then you asked a bunch of  
14           questions and that's pretty much what he said, what  
15           we talked about.

16           **Q: What did he tell you about the questions**  
17           **about the Florida situation?**

18           A: We really didn't get involved in that too  
19           much because I didn't know anything about the Florida  
20           deals so I didn't really ask.

21           **Q: Did he tell you whether there was any**  
22           **questions about Mr. Buchbaum?**

23           A: Yeah, he told me there was questions about  
24           Mr. Buchbaum.

1           **Q: What did he say about that?**

2           A: He said that there was a question on what  
3       kind of manager he was.

4           **Q: What did he say about that?**

5           A: That he was a micro manager.

6           **Q: Did Mr. Walsh tell you that the atmosphere  
7       when Mr. Buchbaum was the General Manager was like  
8       walking on egg shells?**

9           A: Yes he did.

10          **Q: And you used that same term today, didn't  
11       you?**

12          A: I believe I did, yes.

13          **Q: What else did he tell you about the  
14       questions about Mr. Buchbaum?**

15          A: The walking on egg shells thing was what we  
16       always talked about at the dealership. Everyone used  
17       that term when we worked there together.

18          **Q: What else did he tell you about the  
19       questions about Mr. Buchbaum?**

20          A: Pretty much it. Can't recall.

21          **Q: Did you have any discussion with him about  
22       the non-retail sales policy?**

23          A: Non-retail sales policy.

24           MR. REHNQUIST: And when I say non-retail

1 sales policy I'm talking about the policy that you  
2 talked about at Kelly's that Mr. Berkowitz and I both  
3 asked you about, the Harley-Davidson policy.

4 THE WITNESS: Did we talk about that last  
5 night?

6 MR. REHNQUIST: Yes.

7 THE WITNESS: I don't believe so. I was  
8 cooking dinner at the time.

9 Q: How long did you talk to him?

10 A: Twenty minutes.

11 Q: Did he tell you whether it was better or  
12 worse than he had expected it to be?

13 A: He said it was a lot longer than he  
14 expected it was going to be.

15 Q: Do you plan to call him after you leave  
16 here and tell him how yours went?

17 A: No. I'll probably see him as soon as I get  
18 out of here. I gotta go to work so I'll see him  
19 there.

20 Q: And I gather you talked to Mr. Walsh one  
21 previous time about the subpoena around the time when  
22 both you and he were subpoenaed. Correct?

23 A: Correct.

24 Q: Was that the only conversation that you had

1           **Q: Is that a motorcycle dealership?**

2           A: It sells motorcycles, yeah.

3           **Q: I gather you think you were unfairly**  
4           **treated by Mr. Buchbaum?**

5           A: Yes I was.

6           **Q: Are you married?**

7           A: No. Divorced.

8           **Q: What's the name of your ex-wife?**

9           A: Rhonda Young.

10          **Q: Did she work at Boston Harley-Davidson?**

11          A: She did.

12          **Q: Did she get fired?**

13          A: No.

14          **Q: What were her responsibilities?**

15          A: She was the business manager, finance  
16          manager.

17          **Q: How long were you married to her?**

18          A: A year, thirteen months.

19          **Q: When was that thirteen month period**  
20          **approximately?**

21          A: (No verbal response).

22          **Q: Do you remember when you got married, the**  
23          **date?**

24          A: Yeah, it was October 13, 2001.

1 A: Yes.

2 Q: Prior to being fired had Mr. Buchbaum been  
3 critical of your performance in any respect?

4 A: Always critical.

5 Q: About what aspects of your performance?

6 A: My attitude, my looks, the way I walked,  
7 the way I talk, the way I sold a bike, the way I ran  
8 the Service Department. He was critical about every  
9 aspect.

10 Q: And I gather this is what led to your  
11 decision to seek employment elsewhere?

12 A: Yes.

13 Q: So I gather it wasn't a surprise to you  
14 when you were fired?

15 A: He'd always tell me that I was an asset to  
16 this company. At my tenth anniversary I had a party,  
17 they had a party for me on my tenth anniversary to  
18 say how great I was and then the next day he told me  
19 he wanted to send me home because I didn't look good,  
20 or I wasn't talking nice, or I wasn't smiling enough.

21 Q: Are you saying you got some mixed messages  
22 from Mr. Buchbaum?

23 A: Yeah, I think so. Very mixed.

24 Q: But he was critical of your performance on

1 a fairly regular basis?

2 A: Yes.

3 MR. REHNQUIST: I have no further  
4 question. Thanks.

5 MR. BERKOWITZ: No questions. Thank you.

6 THE VIDEOGRAPHER: The time is 12:02 p.m.  
7 and this deposition is now concluded. This is the  
8 end of video cassette number 1. We're going off the  
9 record.

10 (Off the Record at 12:02 p.m.)

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